

REMARKS

In the Advisory Action dated September 3, 2008 the Examiner interpreted the claims on file as product-by-process claims because the claims stated that the bifurcated sections were formed by slits. While Applicants disagree, they have amended the claims to recite additional structure and thus believe the claims as amended are clearly now apparatus claims as always intended. The claims now require that the openings for receiving the securing means such as a cable are formed by an outwardly extending portion with the cable extending around the bone under that portion but over the section adjacent the slit forming the outwardly extending portion. Obviously none of the prior art cited by the Examiner contains such a structure.

The Examiner rejected the independent claims as either being obvious over either Baldwin et al. U.S. Patent No. 7,207,993 or Getscher et al. U.S. Patent No. 3,824,995. The Examiner states that Baldwin et al. disclosed the claimed invention except for explicitly reciting the bracket could be comprised of separate arms and with respect to Getscher et al. the Examiner stated that the device comprised a free end, e.g. extending from the offset portion 16 which free end comprised a split open section.

Applicants wish to point out that the claims as amended relate to the guide with a split open section which directs the cerclage cable, or more broadly, the adjustable securing means through a guide on the first portion of the bracket and around the bone as claimed. It is the guide which is formed by the outwardly extending section of the bracket first portion or arm with the outwardly extending section formed by a slit through the distally extending bracket first portion or arm intermediate first and second sides of the first portion. This is clearly shown in FIGS. 7 and 8. Note the securing means

is taught in the specification as a wire, strap or ribbon.

Applicants are unclear as to what structure in either Baldwin et al. or Getscher et al. forms the outwardly extending section wire guide formed by a slit in the first portion or arm which extends distally along the femur. Baldwin teaches typical through bores 360 to receive and guide the wires. Obviously Getscher et al. does not even teach the use of a cerclage wire or any adjustable securing means with the screw 30 being the only attachment. Obviously Barnes U.S. Patent No. 5,941,881 does not teach the claimed structure for guiding the cerclage cables. Consequently, a combination of Barnes and Getscher et al. cannot possibly produce the claimed structure.

It is submitted that the Examiner has not set forth a *prima facie* case of obviousness since no piece of prior art either alone or in combination teaches the structure claimed. Merely stating that it would have been obvious for one of ordinary skill to produce the claimed structure is insufficient to form a *prima facie* case absent some suggestion of the structure in the prior art. Applicants have invented an inexpensive method of forming a trochanteric plate which can be made by, for example, stamping sheet metal without subsequent complicated machining or drilling.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

Application No.: 10/813,213

Docket No.: OSTEONICS 3.0-455

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: October 1, 2008

Respectfully submitted,

By 

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